

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. MERCURY INTERNET AND WIRELESS SERVICE, Respondent.	DOCKET NO. FCU-03-44
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**ORDER DOCKETING FOR FORMAL PROCEEDING
AND REQUESTING RESPONSE**

(Issued January 20, 2004)

On July 21, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution issued in C-03-149, involving Mercury Internet and Wireless Service (Mercury), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On June 9, 2003, Dr. Kathy Keltz filed a written complaint with the Board against Mercury alleging that Mercury placed unauthorized charges for Internet services on Dr. Keltz's office telephone bill. Board staff identified the matter as C-03-149 and, pursuant to Board rules, on June 10, 2003, forwarded the complaint to Mercury.

Mercury responded to the complaint on June 20, 2003, stating that its records indicate the services that appeared on Dr. Keltz's office telephone bill were properly authorized by Debbie Moffatt. Mercury attached a copy of the third-party verification recording to its response. Mercury further stated that Dr. Keltz's account was credited in the amount of \$59.90 and all Internet services were terminated.

On June 23, 2003, Board staff forwarded a copy of the third-party verification to Dr. Keltz, asking that she and Ms. Moffatt review the recording and respond in writing by July 3, 2003. Dr. Keltz provided a written response to the recording on June 27, 2003, wherein she alleged that the recording provided by Mercury was "doctored." Ms. Moffatt provided a written response to the recording on June 25, 2003, wherein she admitted that the voice on the recording was hers, but stated that the recording had been altered and that she had not participated in the conversation on the recording.

On July 7, 2003, Board staff issued a proposed resolution describing these events and proposing that the credits offered by Mercury represent a fair resolution of the situation. No party other than Consumer Advocate has challenged the staff's proposed resolution.

In its July 21, 2003, petition, Consumer Advocate asserts that a civil penalty should be imposed against Mercury to deter future cramming violations.

The Board has reviewed the record to date and finds that there is sufficient information to warrant further investigation in this matter. The Board recognizes that there has not been any action in this matter for some time. Therefore, the Board will delay establishing a procedural schedule until March 2, 2004, and allow Mercury an opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on July 21, 2003, identified as Docket No. FCU-03-44, is granted and docketed for formal proceeding.
2. Mercury Internet and Wireless Service are requested to file a response to the petition filed by Consumer Advocate on July 21, 2003, on or before March 2, 2004.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 20th day of January, 2004.